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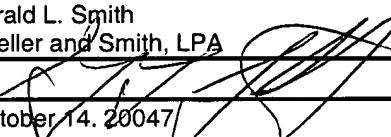
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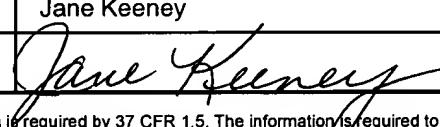
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		First Named Inventor	George W. Baughman
		Art Unit	3637
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ENCLOSURES (Check all that apply)			
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):	<input type="checkbox"/> Remarks
Request for Reinstatement of appeal			

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of) George W. Baughman, et al.
Serial No:) 09/955,417
Filed:) September 18, 2001
For) Method and System for Presenting Merchandise at an
) Outdoor Paved Surface
TC/AU) 3637
Examiner) Phi Dieu Tran A.
Attorney Docket No.) KEG 2-001

Honorable Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Request For Reinstatement of Appeal

Remarks

In response to a third non-final Office Action mailed April 26, 2004, the applicants filed an Appeal with three copies of Appellants Brief which was received at the Patent Office on May 28, 2004.

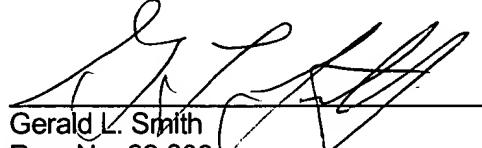
In an Office Action mailed September 22, 2004 the Examiner entered another non-final Office Action and reopened prosecution.

This is to request reinstatement of the Appeal pursuant to 37 CFR § 1.193(b)(2)(ii). Three copies of a Supplemental Appeal Brief are submitted herewith. No new amendments, affidavits or other evidence are submitted.

The Commissioner hereby is authorized to charge any fees to Deposit Account No. 13-4830. A duplicate of this sheet is enclosed.

Respectfully submitted,

Date: 14 Oct 04


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Enc(s). 3 copies of Supplemental Appeal Brief

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APPELLANT'S SUPPLEMENTAL BRIEF ON APPEAL

Serial No. 09/955,417

**METHOD AND SYSTEM FOR PRESENTING MERCHANDISE
AT AN OUTDOOR PAVED SURFACE**

By George Washington Baughman III, et al.

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Real Party in Interest

The appealed application has been assigned to Outdoor Merchandising Solutions, LLC, a corporation of the State of Delaware having an office at P. O. Box 506, Sarasota, Florida, 34230-0506.

Related Appeals and Interferences

There are no related appeals or interferences known to the applicants, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

Status of Claims

The claims under appeal are claims 1 through 26.

No amendments were made to the claims during the examination of the application and the claims under appeal are those as originally presented.

In an initial Office Action mailed April 24, 2003, claims 1-17 were rejected under § 112 (second paragraph) of the Patent Statute as being indefinite with respect to the terms "an overhead signage sight height from said surface to a top".

Claims 1-17 were rejected under § 103 (a) of the Patent Statute as being unpatentable over Pool, U. S. Patent No. 2,638,636 (Pool) in view of Feleppa, U. S. Patent No. 5,700,102 (Feleppa) and Thornton, U. S. Patent No. 3,673,720 (Thornton) and Reilley, et al., U. S. Patent No. 5,120,941 (Reilley, et al.).

Claims 18-26 were rejected under § 103 (a) of the Patent Statute as being unpatentable over Pool (supra), in view of Feleppa (supra) and Thornton (supra) and Reilley, et al. (supra).

Applicants responded to the Office Action on July 16, 2003. In that response no alterations to the claim program were made; 4 declarations drawn under the provisions of 37 CFR 1.132 were submitted and 27 requests under the provisions of 37 CFR § 1.104 (d) (2) were asserted.

In a second Office Action mailed October 24, 2003, claims 1-17 were rejected under § 103 (a) of the Patent Statute as being unpatentable over Pool (supra) in view of Feleppa (supra) and Thornton (supra) and Reilley, et al. (supra) and additionally Glass, U. S. Patent No. 6,148,551 (Glass), one screen from a Flea Market Slide Show (Flea Market) and Howes, Jr., U. S. Patent No. 3,982,758 (Howes, Jr.). Claims 11 and 12 were additionally rejected over Duarte, another website screen.

Claims 18-26 were rejected under § 103 (a) of the Patent Statute as being unpatentable over Pool (supra), in view of Feleppa (supra) and Thornton (supra) and Reilley, et al. (supra) and Flea Market (supra) and Howes, Jr., (supra). In a component of the rejection entitled "Response To Arguments", applicants arguments with respect to claims 1-26 were indicated as having been

considered but as being moot in view of the new grounds of rejection. Further, the declarations filed under 37 CFR 1.132 were considered sufficient to overcome the rejection of claims 1-26 based upon Pool, Feleppa, Thornton, and Reilley, et al.

Applicants submitted a response to the second Office Action on January 15, 2004 asserting initially that the Flea Market and Duarte references were not printed publications within the meaning of 35 USC 102 (a) and (b) and further submitting four supplementary declarations drawn under the provisions of 37 CFR 1.132. Further, applicants submitted twenty-five requests under the noted provisions of 37 CFR § 104 (d) (2).

In a third non final Office Action mailed April 20, 2004, claims 1-17 were rejected under § 103 (a) of the Patent Statute as being unpatentable over a combination of eight references including Pool (supra), in view of Feleppa (supra), Thornton (supra), Reilley et al. (supra), Glass (supra), Flea Market (supra), Howes, Jr. (supra) and Barnes, U. S. Patent No. 3,940,139 (Barnes). Additionally, claims 11 and 12 were further rejected in view of Duarte (supra). Claims 18-26 were rejected under § 103 (a) of the Patent Statute, the Examiner citing Pool (supra) in view of Feleppa (supra), Thornton (supra), Reilley, et al (supra), Flea Market (supra), Howes, Jr. (supra), and Barnes (supra). In the "Response to Argument" portion of the rejection the Examiner indicated that the applicant's arguments and declarations with respect to claims 1-26 were considered but were moot in view of new grounds for rejection. The twenty-five requests under 37 CFR § 104 (d) (2) were ignored.

Applicants filed a Notice of Appeal and accompanying three copies of a Brief on Appeal which was received on May 28, 2004. The issues set forth in the brief questioned whether two websites were printed publications within the meaning of 35 U.S.C 102 (a) and (b); whether claims 1-17 were unpatentable under the provisions of § 103 (a) of the Patent Statute over a combination of nine references and further in view of the submittal to the record of eight declarations drawn under the provisions of 37 CFR § 1.132; and whether claims 18-26 were unpatentable under the provisions of Section 103 (a) of the patent statute in view of the citation of a combination of eight references and further in view of the submittal by the applicants of eight declarations drawn under the provisions of 37 CFR § 1.132. The brief also looked to a misleading use of one website citation and noted the Examiner's ignoring of numerous requests to support undocumented commentary under the provisions of 37 CFR § 1.104 (d) (2).

In a fourth non-final Office Action mailed September 22, 2004 prosecution was reopened and claims 1-17 were rejected under § 101 of the Patent Statute for the first time. Claim 10 was rejected under § 112 of the Patent Statute for the first time. In rejecting claims 1 and 16-17 under

§ 103 (a) of the Patent Statute the Examiner abandoned the principal reference, Pool and substituted a secondary reference, Feleppa as the principal reference. That new principal reference was utilized in rejecting claims 1-23, 25 and 26. Claim 24 was not addressed in the Office Action. Three new references were cited, Baumler, U. S. Patent No. 6,471,153 (Baumler) concerning a moving target presumably for rifle practice; U. S. Patent No. 3,777,428 describing an observation signal device utilized for geodetic surveys and the like; and Wheeler, U. S. Patent No. 4,830,382 concerning a portable volleyball net support system (Wheeler).

This supplemental brief is submitted in conjunction with applicants request for reinstatement of the appeal pursuant to 37 CFR § 1.193 (b)(2)(ii).

Status of Amendments

No amendments have been filed subsequent to the fourth non-final rejection mailed September 22, 2004.

Summary of Invention

For convenience of the reader, the summary of invention provided in the initial brief submitted by the appellants is reproduced herein.

The present invention is directed to a method and system for presenting merchandise such as lawn and garden products at an outdoor paved surface and, in particular, at the parking lot of a retail store. The system and method develops a retail environment at the parking lot on a seasonal basis which is tailored to the science of shopping. An initial insight to that science is provided by quotations from Underhill for instance, at page two of the application, Underhill is quoted to the effect that branding and traditional advertising do not necessarily evoke sales in the modern retail environment. Many purchasing decisions are made or are heavily influenced on the floor of a store itself. Underhill indicates that signage, shelf position, display space and special fixtures all make it either likelier or less likely that a shopper will buy a particular item. It is necessary to fashion displays such that shoppers can examine them comfortably and easily. A parking lot traditionally has been considered a detriment to the fostering of sales. The parking lots typically involve exhaust fumes, automobiles being poorly driven, debris strewed about and they typically exude the environment of a vast stretch of asphalt. The application again quotes Underhill at pages 3 and 4 where studies have shown that shoppers walk quickly with a "parking-lot stride" toward the entrance of a retail store. The typical shopper when initially entering a store from a parking lot will ignore upfront signage and the like, Underhill stating that if the sales staff hits a shopper at the entrance next to the parking lot with a "can I help you?" the answer is going to be a negative one.

As discussed at page four of the application, typical parking lot based lawn and garden sales regions have no characteristics lending to their identification from a distance nor establishing their mercantile function. The mercantile region should be identifiable from a distance. As a further criteria in the science of retailing, as discussed at page five of the application, Underhill indicates that regardless of what store designers and merchandise managers think, in many ways, the cash/wrap area is the most important part of any store. If the transactions are crisp, if the organization isn't clear at a glance, shoppers get frustrated or turned off. With the present invention, the seasonal nature of this form of merchandising is addressed through the employment of a permanent grid of in-ground anchors, each supporting an insertion sleeve and adjusted for pavement elevation variations. Poles of common height are erected by slidably inserting them within the sleeve of selected anchors and that selection of anchors within which to insert a pole is one which establishes the geometric boundaries of the

merchandising region. Such a grid is shown in Fig. 9 and described at page 18 of the application. Anchors not selected by the retailer for the purpose of supporting poles are represented by empty circles, certain of which are shown at 244. For the demonstration of the figure, the anchors which are utilized are shown in solid fashion at 246-259. The entrance to the merchandising region is represented at arrow 282 and its exit at arrow 284. An important shopper aisle is established at 280 extending between the entrance region represented at arrow 282 and the exit region represented at arrow 284.

Now looking to Fig. 1, the three dimensional merchandising region represented generally at 10 is seen to have a right side front region represented generally at 22 and a right side exit region represented generally at 24. Right side front region 22 is formed with elongate poles 14 and 15 which extend above the pavement surface 12 an overhead signage site height to a top represented respectively at 14b and 15b. Interconnecting pole tops 14b and 15b is a horizontally disposed upper signage support provided as a tensioned cable 26. Merchandise information signage as represented at signs 28 and 30 is suspended from the cable 26. Pole 15 in conjunction with poles 16-19 establish a right side region of the retailing geometric boundary as represented generally at 34. Poles 15-18 are mutually spaced apart a bay distance, for example, 10 feet and extend respectively from the surface at location 16a-18a at surface 12 to tops shown respectively at 16b-18b. Looking at one of the bays, it may be seen that signs 40-42 are suspended from a tensioned cable 38 and additionally are supported against wind induced movement by connection with a lower disposed horizontal retainer incorporating cable 44 which also is in tension (see additionally page 10 of the application). A second merchandising bay is seen extending between poles 16 and 17 and a third extends between poles 17 and 18. Poles 14 through 17 will have a height above pavement 12 of about 10 feet, while pole 18 will have a height of about 12 feet and is configured in combination with poles 76, 80 and 81 to define a canopy 74 configured with waterproof fabric which extends over a cash-wrap station counter and cash register represented generally at 90. Thus arranged, the canopy 74 draws the shoppers attention to the location of the cash-wrap station 90. An identical arrangement is provided for the left side of the merchandising region 10, the components thereof being represented with the same identifying numeration but in primed fashion. Sides 34 and 34' further function to define a shopper aisle represented generally at 120.

As described at page 12 of the application, merchandising systems as at region 10 may be positioned upon surfaces as at 12 which are located within a topographical region making remote visualization by prospective shoppers more difficult to achieve because of blocked vision. Signage to attain such remote shopper attention in such regions can be provided adjunctly to system 10 utilizing the modular larger poles as at 18 and 76 to support tall banner-like

signage, for example, reaching to pole tops at 12 feet above surface 12. Such elevated signage is shown in Fig. 1 in conjunction with paired poles 100 and 102. As seen in Fig. 4, these poles extend respectively from the surface at locations 100a and 102a to pole tops 100b and 102b. Horizontally disposed signage suspending support 104 extends between the pole tops 100b and 102b which, in turn, supports a thin sign 106. Support 104 is implemented with a tensioned cable. To support the lower edge of sign 106 a similar tensioned cable implemented support is shown at 108 extending adjacent surface 12. Figs. 1, 3 and 4 further reveal the presence of flag assemblies as at 92-96 which are attached to the top of the various vertical poles. These flag assemblies are vision stimulators as described at page 14 of the application, in effect, leading the shoppers' sight lines to the information provided at the overhead signage as at 40-42, 52-54 and 62-64.

Referring to Fig. 11 and page 22 of the application an exemplary anchor is portrayed receiving the insertion end of a pole 290. The anchor is formed with a cylindrical steel sleeve 412 extending vertically downwardly to an engagement surface defining bottom plate 416. The insertion end 428 of the pole 290 is in contact with the upper surface of bottom plate 416. Additionally, the poles are retained in position by a bolt and angle iron arrangement shown at 430. In this regard, a nut 424 is welded to the bottom of the angle iron for receiving a retaining bolt 436. Note that the top of the sleeve 412 at 414 is below pavement surface 294. When not in use, a cap as represented generally at 440 and seen in Figs. 12 and 13 is positioned over the top of the sleeve and bolted in place as represented again at bolt 436 and nut 424.

The seasonal merchandising region 10 is designed such that untrained retail clerks can assemble it. In this regard, tensioned cables and clips are employed. Figs. 10, and 15-17 detail the assembling approach. Looking to Fig. 10, two poles are illustrated at 290 and 291 extending above pavement surface 294. Insertion ends of the poles 290 and 291 (Fig. 11) extend a predetermined distance beneath the surface 294. The poles extend from the surface of pavement 294 to a top as shown respectively at 296 and 297 an arbitrarily defined overhead signage sight height (application page 19). Sight lines from the eyes of a shopper will be to the signage suspended from the vicinity of tops 296 and 297. The top region of each pole is configured with overhead top connector assemblies provided as four steel eyelets arranged symmetrically as shown in Fig. 15. Horizontally disposed signage support is represented generally at 304 in Fig. 10 and is implemented as a tensioned steel cable 306. To facilitate assembly of the upper support assembly 304, chain replacement links as shown at 310 and 312 are interposed between cable 306 and the next component of the assemblage. Chain replacement link 310 is shown connected to the eye of one threaded component end of a tension creating turnbuckle 314. The oppositely disposed threaded component eye of the turnbuckle 314

is coupled with a chain replacement link 316 which, in turn, is coupled with a spring activated snap clip 318. Clip 318 is coupled to an eyelet of the eyelet assemblage 300. Chain replacement link 312 at the opposite end of cable 306 is coupled with a similar snap clip 320 which, in turn, is connected to an eyelet of the eyelet grouping 302. Waterproof fabric signs as at 322 and 324 are suspended from the assembly 304 by connectors as at 326, 328, 334 and 336. As described at page 20 of the application, extending in tension just below signs as at 322 and 324 is a horizontally disposed lower sign support or retainer assembly represented generally at 346 and structured identically as the upwardly disposed signage support 304. Sign 322 is connected to the lower sign support for retainer 346 by two breakaway connectors 368 and 370. Similar breakaway connectors are provided at 374 and 376 in connection with sign 324. As described in connection with page 21 of the application, the height from the pavement surface 294 to the top of the poles 290 and 291 and thus to the top region of the signage has been designated as an "overhead signage sight height". Correspondingly, the signage extends downwardly from the upper support within a shopper line of sight region to a bay access elevation above the surface 294 which may be represented as the elevation of the lower support or retainer assemblage 346. For the boundary identifying poles, that latter bay access elevation typically will be about 8 feet, an elevation appropriate for providing access for moving forklift trucks within the defined bay region. The distance between the bay defining poles as at 290 and 291 is referred to as a bay distance (page 21 of the application).

Issues

Continuing from the original brief:

- (4) Are claims 1-17 properly rejected under § 101 of the Patent Statute because the claimed invention is directed to non-statutory subject matter?
- (5) Is claim 10 properly rejected under § 112 of the Patent Statute?
- (6) Are claims 1-26 unpatentable under the provisions of § 103 (a) of the Patent Statute in view of the citation of a combination of ten references and further in view of the submittal by the applicants of eight declarations drawn under the provisions of 37 CFR § 1.132?

Grouping of Claims

The claims do not stand or fall as a group, but rather are each separately and independently patentable.

Argument

(4) Are claims 1-17 properly rejected under § 101 of the Patent Statute because the claimed invention is directed to non-statutory subject matter?

The Examiner has rejected claims 1-17, the method claims, under § 101 of the Patent Statute as constituting non-statutory subject matter. In applying that rejection the Examiner cited "MPEP section iV 2(b)". That not being a section in the MPEP , applicant's attorney telephoned the Examiner on September 27, 2004 inquiring as to what the proper citation would be. The Examiner telephoned the applicant's attorney on September 28, 2004 and indicated that he was referring to § 2106 of the MPEP which is devoted to computer related inventions. Applicant's attorney further queried as to the origin of the two conditions to be met under § 101. The Examiner was unaware of the source. The test asserted is as follows:

(1) In the claim, the practical application of an algorithm or idea result in a useful, concrete, tangible result, AND

(2) The claim provides a limitation in the technological art that enables a useful, concrete, tangible result.

Looking to part (1) of that test, the terms "...a useful, concrete, tangible result" have been repeated in *State Street Bank & Trust Co. v. The Signature Financial Group*, 149 F.3d 1368, 47 U.S.P.Q.2d 1596 (Fed. Cir. 1998), *cert. denied*, 525 U.S.1093 (1999). As the Court referred to in *In re Alappat* 33 F.3d 1526,1557, 31 U.S.P.Q.2d 1545, 1557 (Fed. Cir. 1994) as in turn, analyzed at *Arrhythmia Research Technology, Inc. v. CorazonixCorp.*, 958 F.2d 1053, 22 U.S.P.Q.2d 1033 (Fed. Cir. 1992).

In *Arrhythmia Research*, the Court, applying the now dismissed Freeman-Walter-Abele test held process claims incorporating indirect calculations to be statutory. In all analyses of § 101, the Patent Tribunals have asserted that statutory subject matter determinations are always predicated upon the four stated categories of that Section:

"The plain and unambiguous meaning of § 101 is that any invention falling within one of the four stated categories of statutory subject matter may be patented, provided it meets the other requirements for patentability set forth in Title 35, i.e., those found in §§ 102, 103, and 112, ¶2.b."

State Street Bank & Trust (supra) at p. 1600.

In considering the breadth of patentable subject matter, the *State Street Bank* Court states:

"The repetitive use of the expansive term "any" in § 101 shows Congress's intent not to place any restrictions on the subject matter for

which a patent may be obtained beyond those specifically recited in § 101. Indeed, the Supreme Court has acknowledged that Congress intended § 101 to extend to "anything under the sun that is made by man." *Diamond v. Chakrabarty*, 447 U.S. 303, 309 [206 USPQ 193] [sic] (1980); see also *Diamond v. Diehr*, 450 U.S. 175, 182 [209 USPQ 1] (1981). Thus, it is improper to read limitations into § 101 on the subject matter that may be patented where the legislative history indicates that Congress clearly did not intend such limitations. See *Chakrabarty*, 447 U.S. at 308....".

State Street Bank & Trust (supra) at p. 1600.

In response to an assertion of the "business method" exception to statutory subject matter, the *State Street Bank* Court writes:

"As an alternative ground for invalidating the '056 patent under § 101, the court relied on the judicially-created, so-called "business method" exception to statutory subject matter. We take this opportunity to lay this ill-conceived exception to rest. Since its inception, the "business method" exception has merely represented the application of some general, but no longer applicable legal principle, perhaps arising out of the "requirement for invention"--which was eliminated by § 103. Since the 1952 Patent Act, business methods have been, and should have been, subject to the same legal requirements for patentability as applied to any other process or method".

State Street Bank & Trust (supra) at p. 1602.

"In view of this background, it comes as no surprise that in the most recent edition of the Manual of Patent Examining Procedures (MPEP) (1996), a paragraph of § 706.03(a) was deleted. In past editions it read:

Though seemingly within the category of process or method, a method of doing business can be rejected as not being within the statutory classes. See *Hotel Security Checking Co. v. Lorraine Co.*, 160 F. 467 (2nd Cir. 1908) and *In re Wait*, 24 USPQ 88, 22 CCPA 822 (1934).

MPEP § 706.03(a) (1994). This acknowledgement is buttressed by the U.S. Patent and Trademark 1996 Examination Guidelines for Computer Related Inventions which now read:

Office personnel have had difficulty in properly treating claims directed to methods of doing business. Claims should not be categorized as methods of doing business. Instead such claims should be treated like any other process claims".

State Street Bank & Trust (supra) at p. 1604.

Now turn to claims 1-17. These claims concern a method for presenting merchandise at an outdoor paved surface. The claims may be directed to a business method, but they are predicated upon extensive retail marketing research (retail marketing science) as fully set forth in the specification of the application. They involve steps defining a retail boundary; providing

anchors and poles defining bay distances; interconnecting the poles with signage support; and suspending information signage extending to a bay access elevation. It is a process of providing and interconnecting merchandising presentation components in consonance with the established science of retail merchandising. It is doubtful whether an algorithm exists, however, most certainly no mathematical algorithm is present.

The Examiner has simply provided part 1 of an obscure test. No rationale has been given as to the applicability of § 101 to the claims. Why has such a rejection been brought up on the fourth non-final Office Action and when application is under appeal? The second component of this alleged § 101 condition calls for the claim providing a limitation in the “technological art”, citing CCPA decisions from the 1970s era. At that time the technological art requirement was present with respect to mathematical formulations and computer program related claims. For example, it was present in the U. S. PTO 1981 guidelines on “patentable subject matter – mathematical algorithm for computer programs”. The instant invention involves no mathematical algorithm or computer program. Some light may be shed from one of the cited earlier decisions, *In re Musgrave*, 167 U.S.P.Q. 280 (CCPA 1970). In that decision, Rich, J. states:

“...All that is necessary, in our view, to make a sequence of operational steps a statutory “process” within 35 U.S.C. 101 is that it be in the technological arts so as to be in consonance with the Constitutional purpose to promote the progress of “useful arts.” Const. Art. 1, sec 8.

In re Musgrave at 289-290.

Thus, the actual requirement is constitutional, requiring a promotion of the “useful arts”. In 1970 there was no way of anticipating *State Street Bank* and its progeny. Do the claims of the instant invention promote the “useful arts”? Indeed they do, being directed to the science of retail merchandising with the achievement of ameliorating a parking lot atmosphere and drawing the attention of retail customers. Do the claims of the instant invention involve a technological limitation? Of course. The process produces a product with a geometric assembly of poles, wires and banners.

It is submitted that claims 1-16 clearly are proper statutory subject matter under the provisions of § 101 of the Patent Statute.

(5) Is claim 10 properly rejected under § 112 of the Patent Statute?

The Examiner has rejected claim 10, asserting that the limitation "as said horizontally disposed ..support" is indefinite. It is submitted that the claim is not indefinite. The terms in question are present at lines 13 and 14 of claim 1. Note that the claim step provides for interconnecting of said pole top with a next adjacent pole top with a "horizontally disposed signage support to define a three dimensional retailing region. The terms, *inter alia* are described at page 9 of the specification at lines 23-25. The terminology is clear and the description is clear. There is no indefiniteness involved in claim 10.

(6) In rejecting claim 1 the Examiner asserts that Feleppa (Fig. 88) shows a retailing geometric boundary at a paved surface (Fig. 89). Feleppa shows no such thing. The Examiner then proceeds to paraphrase components of claim 1 and attribute them to Feleppa. The Examiner is simply utilizing the applicant's own disclosure as a template to piece together the teachings of the prior art. See *In re Fritch*, 972 F.2d 1260, 1266, 23 U.S.P.Q.2d 1780, 1784 (Fed. Cir. 1992) a quote from which is provided at page 18 of the original brief.

Returning to Feleppa, the Examiner describes the plurality of first poles of first height, each having a first top and an insertion end. There is no hint whatsoever that the poles of Feleppa have an insertion end. Next the claim continues to be paraphrased as having a height establishing an overall signage height from the surface to the first top. Note that there is no surface disclosed in Feleppa. The Examiner continues to paraphrase the claim calling out a merchandise information carrying sign suspended from adjacent the tops of the poles (the sign with FRESH PRODUCE). The first poles set forth in claim 1 are the poles at a first height which carry signage. Assuming there is any comparison between Feleppa and the instant invention, it will be the outer peripheral poles defining a geometric boundary which carry the signage. The fresh produce sign in Fig. 88 of Feleppa is on a higher pole presumably. The figure is so vague little can be deduced from it. The Examiner next describes that there is an interconnecting of a pole top with a next adjacent said pole top with a horizontally disposed signage support. It appears there is no "indefiniteness" at this stage of the rejection. The Examiner then paraphrases a later claim reciting the provision of a flag structure at the top of the pole (Fig. 88), providing a plurality of flag assemblies. The sentence ends in incompleteness, however, in claims 1 and 16-17 there are no flag assemblies recited.

The Examiner then proceeds to provide a thirteen line sentence again paraphrasing claim 1 and indicating that this extensive number of recitations are not shown in Feleppa. Feleppa is addressed on page 16 of the initial brief where the applicants have indicated that Feleppa

describes (Fig. 88) as follows: "FIGS. 66-93 show, as perspective stick figures, various frame configurations formed by rigid elongate elements joined together by connectors formed by assemblies of the modules of the invention". Applicants indicated that Fig. 88 is a tent, (at least the patent describes these devices as shelters). As the applicants describe in the Background of the instant application, the use of tents to sell outdoor products in parking lots heretofore has been deemed not to be cost effective and little if no signage is utilized. The applicants further noted that if produce were indeed sold in the tent of Fig. 88 of Feleppa, the customer couldn't see the sign because of the shelter roof. See the original declaration of Kern in the record and particularly noting paragraphs 6, 7 and 15-19 in that document. See the original declaration of Baughman and particularly paragraphs 5 and 15-17 thereof.

Next, the Examiner asserts that Thornton shows a plurality of anchors, at least two of the anchors being mutually spaced apart a bay distance. The Examiner further alleges, again paraphrasing claim 1, the presence of vertically disposed sleeves with a support distance extending to an engagement surface and that the poles are in freely abuttable contact with the sleeve. Thornton is discussed at page 17 of the original brief where it is indicated that Thornton shows two poles, not a plurality of poles. Those two poles stick in the ground and support a rigid sign which slides up and down on the pole so that the lettering on the sign can be changed. The Examiner alleges that the space below the sign is a "bay distance". There is no such component as much as suggested in Thornton. One also queries how a rigid two posted sign that slides up and down can be combined with a stick tent. Note that claim 1 calls for positioning merchandise within the bay below the bay access elevation and locating the merchandise in correspondence with the merchandise information signage. Such bay definition is clearly not present in Thornton and is essentially impossible in Feleppa. Note the original declaration of Kern and in particular, paragraphs 6, 7, 21-24 thereof. Note the original declaration of Thornton and in particular paragraphs 24-27 thereof. Note the original declaration of Wood and in particular, paragraphs 9 and 10 thereof. Note the original declaration of Dascenzo and in particular, paragraphs 5, 9 and 10.

Next, the Examiner attempts to shoe horn Reilley, et al., into claim 1 by alleging that it "...shows a plurality of supporting posts having merchandising information signage from a signage support at a boundary, bays (where merchandise 28 locates) forming between the post, the merchandise being positioned within the bay below the bay access elevation above the surface" (sic). Reilley, et al. is discussed in the original brief at page 17 where the commentary is made that, while Reilley, et al., shows a retail area, that retail area is a conventional shelf supporting heavy bag merchandise. Reilley, et al. describes "price channels" not "signage support" as described by the Examiner. On those channels are paper pads carrying product

identification marking information and in accordance with Reilley, et al. invention, UPC symbols. Instead of having to carry heavy bags, the customer simply tears off a slip and takes it presumably to the cashier. The Examiner is incorrect in describing signage hanging from the signage support. The Examiner is incorrect in describing that the merchandise is positioned within the bay below a bay access elevation. There is no bay access elevation as described in the instant application in the document whatsoever. Again, the Examiner is following a roadmap based upon the applicant's own disclosure. See the original declaration of Baughman and in particular, paragraphs 20-22 thereof. See the original declaration of Kern and, in particular, paragraphs 40-43 thereof.

Next, commencing at page five and extending to page six, a twenty-nine line sentence is provided describing why it would be obvious to combine a tent with a two posted rigid sign and a steel shelf with a tear-off slip to derive the methodology of claim 1. That can only be done by reading in the limitations of claim 1 notwithstanding the fact there is no reason to combine these references and the references don't disclose what is attributed to them from claim 1. For example, at line 7 of that prolix statement, the first poles are described as defining an entrance region and a shopper aisle extending therefrom to a shopper exit region. Where is the shopper aisle in any of those references and how can you create one by combining them? Looking to line 8, where are a number of merchandising bays extending between adjacent poles? They aren't present anywhere in any contrived combination of these references. Next, at line 15 of the sentence the Examiner recites providing a cash/wrap region adjacent the shopper aisle. The rationale: "...because having anchors slidably receiving the poles in the ground would provide secured vertical support for the vertical poles as taught by Thornton having the poles defining an entrance and exit shopper region would have been obvious...it is well known...". There is no cash/wrap region suggested in any of the references or by their combination. Further, there are no aisles defined by peripheral poles. Statements such as this have compelled the applicants to request numerous statements under 37 CFR § 1.104(d)(2) all of which requests were and continue to be ignored. Another example of this improper form of rejection commences at line 24 of the sentence, describing that it is obvious to one having ordinary skill in the art as bay area with signage information is a well known convention method of presenting and locating product in a store as shown in many commercial stores (Home depot, Lows, especially the gardening section) (sic). Among other things, the method at hand as described in claim 1 is one for presenting merchandise at an outdoor paved surface. Not in the middle of Home Depot. Another of these unsupported statements follows by describing "...having the signage extending within a shopper line of sight region would have been obvious to one having ordinary skill in the art as it would have been an obvious matter of engineering design choice to have a signage within a

shoppers line of sight region as it would attract the customers attention to the information better." Again, the Examiner is simply using the applicant's own disclosure as a roadmap and assigning information to a patently ineffective combination of references which simply represent the applicant's own disclosure.

Commenting with respect to claims 16 and 17, the Examiner has stated that Feleppa as modified inherently shows a plurality of anchors providing said sleeves as each having a base plate at an elevation with respect to the paved surface selected to effect a linear alignment of the first pole tops (sic). In the Midwest we refer to that as "scratching on the wall". Feleppa shows a stick drawing of a shelter with not so much as an illustration of ground surface. The Examiner now has read into that drawing the subject matter of claims 16 and 17 which describes the sleeves as each having a base plate at an elevation with respect to the paved surface selected to effect the linear alignment of the first pole tops. Where is that in Feleppa? In claim 17 the step providing a plurality of anchors provides them in a regularly spaced relationship defining a geometric grid. Such grid is described, for example, in connection with Fig. 9. Where is the grid in Feleppa? Where is the step for defining a retailing boundary by selecting anchors within the grid? No suggestion of such a feature exists anywhere but in the applicant's own disclosure.

At page 7 of the Office Action claim 2 is rejected. Claim 2 looks to providing flag support structures at the top of the pole and providing a plurality of flag assemblies while positioning those assemblies within the flag support structures. As described above, the Examiners interpretation of Feleppa puts the flags on the wrong poles. The flags have to go on the poles with the signage. The Examiner may not interpret a principal reference one way for one set of claims and another for another set of claims. The claim also incorporates all of the many provisions of claim 1 which are not suggested by the combination of references.

At page 7 of the Office Action, claim 3 is rejected as being unpatentable over Feleppa in view of Thornton and Reilley, et al. and further in view of Glass. In the latter regard, the Examiner indicates that Glass discloses a banner made of nylon. The Glass reference is discussed at page 17 of the original brief.

Claim 3 has been rejected as unpatentable over Feleppa in view of Thornton and Reilley, et al. and further in view of Glass. The Examiner has stated that Glass discloses a banner made of nylon. The Glass reference is discussed at page 17 of the original brief. In that brief Glass is described as showing a large inflated balloon, a portion of the surface of which is configured to removably retain very large message banners, i.e., six feet wide and approximately 4 feet high. These nylon message banners are attached with Velcro and include plastic letters/numbers. Thus, the large banner is merely a sign, not a nylon flag assembly. As set forth in the

supplementary declaration of Dascenzo and particularly at paragraphs 7-10, nylon material is used to achieve a visual stimulation to the signage below the flags. See additionally the supplemental declaration of Wood and particularly paragraphs 5-10 thereof. See additionally the supplemental declaration of Baughman and in particular paragraphs 6-11 thereof. See additionally the supplemental declaration of Kern and in particular paragraphs 9-14 thereof. Glass is discussed at page 21 of the original brief. Pennants formed of other materials were not effective as a sight stimulator as was nylon. The stationary nylon sign with plastic letters does not provide that function whatsoever. The question next occurs as how the bottomless tent of Feleppa can be as combined with the rigid available sign of Thornton and the tear-off sheet of Reilley, et al. can be combined with a sign carrying balloon in any logical fashion to defeat claim 3? Its difficult to conceive of any form of document that would suggest that combination to meet the requirements of claim 1 and its progeny.

At page 8 of the Office Action claim 4 is rejected as being unpatentable over Feleppa in view of Thornton and Reilley et al. Applicant query how a document describing a stick form shelter; a rigid two-pole mounted sign; and a shelf mounted tear-off sign can be employed to disclose a canopy at a cash/wrap region? Claim 4 was discussed at page 22 of the original brief. Note that the Examiner is opining again with the terms "...because it would enable the sheltering of the cashier and register from the elements." Again, this is exemplary of the reason for the very substantial number of requests under 37 CFR § 1.104(d)(2) all of which were ignored.

At page 9 of the Office Action claim 6 is rejected as being unpatentable over Feleppa in view of Thornton and Reilley, et al., the Examiner using language which progresses to page 10 of the Office Action which is identical to that used in the last Office Action. One merely inserts "Feleppa" in place of the word "Poole". Applicant's commentary is provided at pages 22 and 23 of the original brief. The dimensions set forth in the claim are nowhere suggested in any of the references and it is quite apparent that the Examiner is using the applicant's own disclosure as a roadmap. See the original declaration of Kern and particularly paragraphs 35 and 36 thereof.

At page 10 of the Office Action claim 7 is rejected as being unpatentable over Feleppa in view of Thornton and Reilley, et al. This rejection is described in the original brief at page 23. There is no suggestion of this spacing anywhere in the references combined or taken singularly. Again, the Examiner is using the applicant's own disclosure as a roadmap.

At page 10 of the Office Action claim 8 is rejected as being unpatentable over Feleppa in view of Thornton and Reilley, et al. and further in view of Howes, Jr. Claim 8 is discussed at page 23 of the original brief indicating that, while Howes, Jr. may show covers, it does so in connection with a tennis court. There is no appropriate combination of references. Howes, Jr.

is discussed in the supplementary declaration of Dascenzo and in particular at paragraphs 18-21 thereof. With respect to the latter paragraph, it is stated that the sleeve shown in Howes, Jr. has no engagement surface and no purpose for aligning the tops of the poles supporting the netting involved. See the supplemental declaration of Kerns and in particular at paragraphs 29-31 thereof.

The rejection of claim 9 commences at page 11 of the Office Action, the claim being described as being unpatentable over Feleppa in view of Thornton and Reilley, et al. A discussion of claim 9 is provided at page 23 of the original brief. As in the previous Office Action, the Examiner states that it would have been obvious to modify Feleppa's modified structure to show the step of positioning the poles defining the retail floor pattern as having the entrance region, the shopper aisle and exit region with widths of about ten feet, the Examiner then eluding to engineering design. There are no references to support the Examiner's position. In fact, none of the references so much as suggest an entrance region, a shopper aisle and an exit region, let alone ten feet.

At page 12 of the Office Action, claim 10 is rejected as being unpatentable over Feleppa in view of Thornton and Reilley, et al. and further in view of Wheeler (supra). Wheeler is a newly cited reference and describes a portable volleyball net support with collapsible poles which are vertically secured by anchor lines. The claim is discussed at page 23 of the original brief. The sleeves described in claim 1 are modified as having a support distance located below the paved surface. Poles then are described as having an insertion end configured for slidable insertion to the extent of the support distance. Wheeler teaches against the use of anchors to support the oppositely disposed poles supporting a volleyball net. The Examiner now has combined a stick form picture of a tent; a rigid sign which is moveable up and down along two poles; a conventional shelf with tear-off sheets; and a portable volleyball net support to render the provisions of the outdoor merchandise system of claim 1 as combined with claim 10 as being obvious. It is all too apparent that the Examiner is again reading the applicant's own disclosure as a roadmap in providing this rejection. The Examiner's comment that it would enable the easy adjustment of the cable assembly to have a taut connection between the poles appears to have nothing to do with the claim.

Claim 11 is rejected at page 13 of the Office Action, the Examiner citing Feleppa in view of Thornton and Reilley, et al. and further in view of Wheeler. Claim 11 is discussed at page 24 of the original brief. The claim describes the assemblage shown in general at 346 in Fig. 10 of the application and calls for the provision of a horizontally disposed lower signage support interconnecting adjacent poles at about the bay access elevation. There is nothing in any of the references to suggest a bay access elevation. Additionally, there are no signs in Wheeler. The

only thing described as being supported is a volleyball net. The Examiner has now combined a stick drawing of a tent; a rigid sign which moves up and down over two poles; shelving with tear-off sheets; and a volleyball net support to reject the claim. There is no suggestion that these references should be combined and again, the Examiner's commentary is simply using the applicant's own disclosure as a roadmap.

On pages 13 and 14 of the Office Action claims 12-13 are rejected as being unpatentable over Feleppa in view of Thornton, Wheeler and Reilley, et al. and further in view of Johnson. Claim 12 is discussed at page 24 of the original brief and, being dependent upon claim 11, calls out that the step of coupling the horizontally disposed signage supports is carried out with breakaway couplers configured to break and respond to the assertion of a predetermined wind load upon the signage. The Johnson reference does indeed teach a breakaway scheme. However, the breakaway is associated with a horizontally disposed rigid arm which supports banners. Note that claim 11 calls for coupling the horizontally disposed lower signage support with the signage adjacent the lower border. Then claim 12 provides that that coupling between the sign and the support is provided with breakaway couplers. Accordingly, the sign breaks away not the support. Who wants to repair a rigid support? Keep in mind that one of the tenants of the instant invention is that the system can be erected by untrained store personnel. Not mechanics.

In rejecting claim 13 at page 14 of the Office Action, the Examiner indicates that Feleppa "as modified" shows the horizontally disposed lower signage support being carried out by providing a tensioned cable assembly. Presumably, the Examiner is "modifying" Feleppa by reading in the applicant's own disclosure as a roadmap. There is no hint of any tensioned cable in Feleppa, the patent describes the use of rigid poles and in particular is directed to how to interconnect them. Claim 13 is discussed at page 25 of the original brief.

Claims 14-15 are rejected at pages 14-16 of the Office Action and are indicated as being unpatentable over Feleppa in view of Thornton, Reilley, et al. and further in view of Wheeler. These claims are discussed at page 25 of the original brief and look to the tall vertically oriented banners 106 and 106' shown in Fig. 1 of the drawings of the application. The Examiner comments commencing at page 14 that Feleppa as modified shows all the claim limitations (presumably modified by the applicant's own teaching) except for subject matter of claims 14 and 15. There is no suggestion of these longer banner supporting second poles in any of the references. Note that those poles are vertical in that they are inserted in anchors which are spaced apart a banner width distance. Claim 14 further calls for providing an upper banner support assembly extensible between the two second poles and horizontally coupling the upper banner support assembly between the two poles whereupon a remotely viewable banner is

attached. At least Johnson shows a banner, albeit connected in an entirely different manner. Poles in Wheeler are horizontal and are not disposed with anchors extending below the outdoor paved surface (claim 1). At page 15 of the Office Action the Examiner attributes all of the recitations of claim 14 to Johnson, again using the applicant's own disclosure as a roadmap giving Johnson attributes which are nowhere present within the four corners of the document.

At page 16, the Examiner indicates that Feleppa "as modified" inherently shows two anchors adjacent the entrance region. That is utterly inaccurate. There is no boundary in the references and there is no defined entrance region as set forth in claim 1.

Claims 18 and 22 look to system and are rejected from page 16 to page 19 of the Office Action. The claims were rejected as being unpatentable over Feleppa in view of Thornton, Baumler and Caufield. Claim 18 is discussed commencing at page 27 of the original brief. In asserting Feleppa, the Examiner indicates that the reference shows plurality of first poles of first height. The Examiner is incorrect in asserting that the poles define a geometric pattern within a retail region boundary. The Examiner is simply paraphrasing claim 18. The Examiner asserts that Feleppa shows that the poles each have an insertion end. There is no such teaching in Feleppa, it is just a stick perspective drawing. The Examiner, again paraphrasing claim 18 describes that the pole first height establishes an overhead signage sight height from the surface to the first top. There is no sight height suggested in the reference; there is no surface shown in the reference. Next the Examiner describes a merchandising information carrying sign suspended from adjacent the tops of the poles indicating the sign fresh produce being appropriate. Unfortunately the Examiner again is shoe horning what is not shown in the reference into the claim terminology. If the border defining poles are to be construed as being equivalent to the tent sidewall poles then the fresh produce sign should be on top of them as called for in the claim not on a pole of different height suspended presumably above the roof of the shelter where there is no sight height because customers are inside the shelter and can't see the sign. The Examiner then proceeds to describe what Feleppa does not show and misses quite a few of the recitations of claim 18. Beyond a recitation of a plurality of poles, the references fails. See declaration of Baughman at paragraphs 14-17. See declaration of Kern at paragraph 6.

At page 17 of the Office Action the Examiner returns to Thornton again calling out a plurality of anchors fixed beneath the surface to slidably receive poles. Thornton is discussed at page 28 of the original brief. Thornton shows a large sign which slides on two poles which are mounted in the ground. The poles aren't spaced a bay distance and there is no sleeve engagement surface. It should further be noted that two poles are not a "plurality" of poles. See declaration of Baughman and in particular at paragraphs 24-27. See declaration of Kern and in

particular at paragraphs 21-24. See declaration of Wood and in particular at paragraphs 9 and 10. See declaration of Dascenzo and in particular at paragraphs 9-11.

At page 17 of the Office Action the Examiner proceeds to paraphrase claim 18 in conjunction with Baumler, an assembly for providing a moving target. Not only is Baumler non-analogous art, there is no rationale as to why one would look to Baumler, i.e., shooting firearms to devise a system for presenting merchandise at an outdoor paved surface. Police authorities probably would frown on such an arrangement. Notwithstanding that deficiency, the Examiner then proceeds to read claim 18 into Baumler, again utilizing the applicant's own disclosure as a roadmap. Baumler has no plurality of upper signage support assemblies. There are no signs in Baumler. There is no removable coupling of the non-existent sign support assembly. There is no retainer connection assembly in Baumler. There is no bay access elevation in Baumler. There is no lower signage retainer assembly in Baumler. There is no removable coupling of that lower signage retainer in Baumler. There is no lower coupler removably connected between a lower signage retainer assembly and a lower border of the sign in Baumler. The Examiner is simply paraphrasing portions of claim 18 with no justification whatsoever.

At page 18 of the Office Action the Examiner looks to Caufield to show a plurality of lower couplers. The Examiner again paraphrases a portion of claim 18 to superimpose a system for presenting merchandise at an outdoor paved surface upon a signal device utilized for geodetic surveys. The references blatantly constitutes non-analogous art. The Examiner again superimposes the language of claim 18 upon this non-analogous art using the applicant's own disclosure as a roadmap. The Examiner now has combined a perspective stick sketch of a tent; a rigid sign which moves up and down along two fixed poles; shelving with tear-off sheets; a dynamic rifle target; and a signal device for geodetic surveys in the rejection of a claim for a system for presenting merchandise at an outdoor paved surface. At pages 18 and 19 of the Office Action the Examiner paraphrases claim 18 again superimposing the language of the applicant's own disclosure on inappropriate references.

At page 19 of the Office Action the Examiner addresses claim 22 which is concerned with the linear alignment of pole tops. The Examiner describes that Feleppa "as modified" shows each said sleeve engagement surface. Feleppa does not as much as show a surface. Presumably, "as modified" means as modified in accordance with the teachings of the applicant's own disclosure.

At pages 19 and 20 of the Office Action the Examiner rejects claim 19. Claim 19 is discussed at pages 32 and 33 of the applicant's original brief. Claim 19, which describes the upper signage support assembly with particularity, has been rejected as being unpatentable over

Feleppa in view of Thornton, Baumler and Caufield and further in view of Wheeler and Rodriguez, a combination of six references. Those six references have no common theme and are inappropriately combined. It is interesting to note that the Examiner's summary as to obviousness is essentially word for word with respect to the earlier rejection involving different references. Apparently the teachings of the references have no bearing whatsoever on the form of rejection. The Examiner simply paraphrases the claim and applies it to whatever reference may be available. Rodriguez is presented for the first time in this rejection. With respect to the issue of non-analogous art one is drawn to the first sentence of the patent which states: "This invention relates to improvements to football goal posts, and in particular, to an apparatus for detecting penetration of the plane between goal post uprights by a football, indicating a score." The applicants shouldn't be required to provide further commentary, however, claim 19, dependent upon claim 18 further calls for two spaced apart spring actuated couplers. No art is present showing the substance of claim 19.

Claim 20 looks to the same recitation but with respect to the lower signage retainer assembly. The claim is rejected at pages 20 and 21 of the Office Action. Claim 20 is discussed at page 33 of the applicant's original brief. The claim has been rejected as being unpatentable over Feleppa in view of Thornton, Baumler, and Caufield in view of Wheeler and Rodriguez. As before, the Examiner has utilized the same rejecting language as utilized in the previous Office Action and has simply plugged in different references while paraphrasing the applicant's own disclosure as set forth in the claim. In effect, the claim is rejected over six references comprising a perspective stick figure of a shelter with no ground surface; a rigid sign moveable up and down upon two posts; a moving rifle target; a signal device for geodetic surveys; a portable volleyball net support; and a device for use with football goal posts. Where is the logic for that combination? Its interesting to note that Rodriguez has no cable tensioners at what would inappropriately be referred to as lower signage retainer assembly.

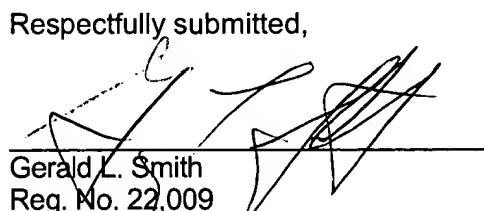
Claims 23 and 26 are rejected at pages 22 through 24 of the Office Action. The claim are rejected as unpatentable over Feleppa in view of Thornton, Baumler and Caufield. On page 22 of the Office Action the Examiner attributes anchors to Feleppa which doesn't so much as show a ground surface. Further, the Examiner attributes Feleppa as showing the anchors being spaced apart a banner width, again paraphrasing the applicant's own claim. The Examiner is correct in showing that the frame of Feleppa shows poles with different heights. At page 22 of the Office Action the Examiner then proceeds to essentially recite the substance of claim 18 and describes that Feleppa doesn't show that. At pages 23 and 24, the Examiner then paraphrases the claim at issue and recites that it would have been obvious to provide all of these claim limitations based upon a stick figure of a shelter. As before, the Examiner is using the applicant's own disclosure

as a roadmap. The commentary at page 24 of the Office Action at the conclusion of the paraphrasing of the claim at issue provides that it would have been obvious to one having ordinary skill in the art as it has been held that mere duplication of the essential working parts of the device involved only skill in the art, citing St. Regis Paper Co. v. Bemis Co., 193 USPQ 8. It's difficult to perceive what the Examiner has in mind with that statement. The St. Regis Paper Co. decision is not by a Patent Tribunal but comes from the 7th Circuit and relies upon two of the most discredited Supreme Court cases in patent history, to wit, Sakarida v. Ag Pro, Inc. and Black Rock v. Pavement Company. Does the reader remember "Synergism"? Notwithstanding those circumstances, the decision has no bearing on the Examiner's statement. Further, the Court applied the standard of the ancient case, Hotchkiss v. Greenwood, 52 US 248 (1851). That is a bit before the arrival of the present Patent Statute. Claim 26, concerning a common pole top elevation is rejected at page 24 of the Office Action, the Examiner again attributing a sleeve engagement surface to Feleppa which doesn't show a surface in the first place. The terms "as modified" apparently again refer to the applicant's own disclosure.

Claim 25 is rejected commencing at page 24 of the Office Action. This claim is concerned with the lower breakaway couplers between the signage and lower support. The claim is discussed commencing at page 34 of the applicant's original brief. Claim 25 has been rejected over Feleppa in view of Thornton, Baumler, Caufield in view of Johnson. Johnson is described as having lower couplers which break away. Unfortunately, the geometry of Johnson is entirely different from that taught and claimed. The breakaway couplers of the invention, as claimed are provided between the lower support and the signage itself. In Johnson the poles break away. Note claim 24 from which claim 25 depends. That claim was not commented upon but clearly distinguishes over the references.

In summation, throughout this entire overly extended prosecution involving four Office Actions and over 100 pages of text, the Examiner has consistently rejected claims 1-26 over claims 1-26

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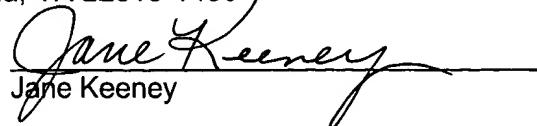


Attorney Docket No.: KEG 2-001

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I hereby certify that this correspondence is being deposited on October 14, 2004 with the United States Postal Service as first class mail in an envelope addressed to:

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Jane Keeney

APPENDIX

CLAIMS

1. The method for presenting merchandise having given trade dress at an outdoor paved surface, comprising the steps of:

defining a retailing geometric boundary at said paved surface;

providing a plurality of anchors about said boundary, each extending below said surface and mutually spaced apart to establish bay distances, each said anchor having a vertically disposed sleeve having a support distance located below said paved surface;

providing a plurality of first poles, each having an insertion end configured for slideable insertion to the extent of said support distance within a said sleeve and extensible, when inserted within a said sleeve, an overhead signage sight height from said surface to a top;

positioning said first poles within said anchor sleeves to define a retail floor pattern having an entrance region and a shopper aisle extending therefrom to a shopper exit region;

interconnecting a said pole top with a next adjacent said pole top with a horizontally disposed signage support to define a three-dimensional retailing region with a select number of merchandising bays extending between adjacent said poles from at least a portion of said geometric boundary to said shopper aisle;

suspending merchandise information signage from said signage support at said boundary along said bays;

said signage extending downwardly from said signage support within a shopper line of sight region to a lower border adjacent a bay access elevation above said surface;

positioning said merchandise within said bay below said bay access elevation and locating said merchandise in correspondence with said merchandise information signage; and

providing a cash/wrap region adjacent said shopper aisle.

2. The method of claim 1 including the steps of:

providing flag support structures at said top of said poles;

providing a plurality of flag assemblies; and

positioning said flag assemblies within said flag support structures.

3. The method of claim 2 in which said plurality flag assemblies are provided as pennants formed with nylon.

4. The method of claim 1 including the steps of:
providing a canopy; and
mounting said canopy with said poles at said cash-wrap region.

5. The method of claim 1 in which said step of suspending merchandise information signage establishes said bay access elevation as about eight feet.

6. The method of claim 1 in which said step for providing said poles with a said overhead signage sight height provides said sight height within a range of between about 10 feet and 12 feet.

7. The method of claim 2 in which said step for providing said anchors, provides said mutual spacing within a range from about 3 feet to about 20 feet.

8. The method of claim 1 including the steps of:
providing a plurality of covers each being extensible over a said anchor sleeve adjacent said surface; and
attaching a said cover over each said sleeve when not engaged with a said pole.

9. The method of claim 1 in which said step for positioning said poles defines said retail floor pattern as having a said entrance region, a said shopper aisle and a said exit region with widths of about 10 feet.

10. The method of claim 1 in which said step for interconnecting each said pole top with the next adjacent pole top is carried out with a tensioned cable assembly as said horizontally disposed signage support.

11. The method of claim 1 including the steps of:
providing a horizontally disposed lower signage support interconnecting a said pole with said next adjacent pole at about said bay access elevation; and
coupling said horizontally disposed lower signage support with said signage adjacent said lower border.

12. The method of claim 11 in which said step of coupling said horizontally disposed signage support is carried out with break-away couplers configured to break in response to the assertion of a predetermined wind load upon said signage.

13. The method of claim 12 in which said step of providing said horizontally disposed lower signage support is carried out by providing a tensioned cable assembly.

14. The method of claim 1 including the steps of:

providing two said anchors adjacent said boundary mutually spaced apart a banner width distance;

providing two second poles each having an insertion end configured for slideable insertion to the extent of said support distance within a said sleeve of one of said two anchors, said second poles being extensible when inserted within a said sleeve, a second pole height from said surface to a second pole top greater than said overhead signage sight height;

providing an upper banner support assembly extensible between said two second poles;

removably horizontally coupling said upper banner support assembly between said two second poles adjacent said second pole tops; and

suspending a remotely viewable banner from said upper banner support.

15. The method of claim 14 in which said step for providing two said anchors adjacent said boundary locates said two anchors adjacent said entrance region.

16. The method of claim 1 in which said step for providing a plurality of anchors provides said sleeves as each having a base plate at an elevation with respect to said paved surface selected to effect a linear alignment of said first pole tops.

17. The method of claim 1 in which:

said step for providing a plurality of anchors provides said anchors in regularly spaced relationship defining a geometric grid; and

said step for defining a retailing boundary defines said boundary by selecting anchors with said geometric grid.

18. A system for presenting merchandise at an outdoor paved surface, comprising:

a plurality of anchors fixed beneath said surface in a geometric pattern within a retail region boundary, at least two of said anchors being mutually spaced apart a bay distance, each said anchor including a vertically disposed sleeve having a support distance located below said surface and extending to an engagement surface;

a plurality of first poles of first height, each having a first top and an insertion end slidably inserted in supporting relationship within a select said anchor sleeve to an extent wherein said insertion end is in freely abuttable contact with said sleeve engagement surface, said first poles being inserted within said anchors in mutually spaced adjacency to define a merchandising region exhibiting an entrance region, a shopper aisle and an exit region, said pole first height establishing an overhead signage sight height from said surface to said first top;

an overhead top connector assembly fixed to each said first pole adjacent said first top.

a plurality of upper signage support assemblies removably coupled with said overhead top connector assemblies to define a boundary of said merchandising region including said entrance region;

a plurality of merchandise information carrying signs suspended from select said upper signage support assemblies and extending downwardly therefrom to a lower border to define a shopper line of sight region;

a retainer connection assembly fixed to each said first pole at a location defining a bay access elevation above said surface when said first poles are inserted within said sleeves;

a plurality of lower signage retainer assemblies removably coupled between retainer connector assemblies of adjacent said first poles in parallel relationship with said upper signage support assemblies; and

a plurality of lower couplers removably connected between said lower signage retainer assemblies and said lower border of said signs.

19. The system of claim 18 in which each said upper signage support assembly comprises:

an elongate cable;

a cable tensioner coupled with said cable; and

two spaced apart spring actuated couplers manually connectable with said overhead top connector assemblies.

20. The system of claim 18 in which each said lower signage retainer assembly comprises:

an elongate cable;
a cable tensioner coupled with said cable; and
two spaced apart spring actuated couplers manually connectable with said retainer connector assemblies.

21. The system of claim 18 in which said lower couplers are configured to break away in response to the assertion of predetermined wind loads at said signs.

22. The system of claim 18 in which each said sleeve engagement surface is at an elevation with respect to said paved surface selected to effect a linear alignment of said first pole tops.

23. The system of claim 18 in which:

two said anchors are spaced apart a banner width and located adjacent said entrance region;

two second poles, each having an insertion end slideably inserted in a sleeve of one of said two anchors to an extent wherein said insertion end is in freely abuttable contact with said sleeve engagement surface, said second poles extending a second pole height from said paved surface to a second top greater than said first height;

an upper banner connector assembly fixed to each said second pole adjacent said second top;

an upper banner support assembly removably coupled with said two second poles at said upper banner connector assembly thereof; and

a banner removably coupled with said upper banner support assembly and extending downwardly therefrom to a lower banner edge.

24. The system of claim 23 further comprising:

a lower banner connector assembly fixed to each said second poles adjacent said lower banner edge;

a banner retainer assembly removably coupled between said second poles at the lower banner connector assembly thereof; and

at least two said lower couplers removably connected between said banner retainer assembly and said lower banner edge.

25. The system of claim 24 in which said two lower couplers are configured to break away in response to the assertion of a predetermined wind load at said banner.

26. The system of claim 23 in which each said sleeve engagement surface of said two anchors is at an elevation with respect to said paved surface selected to affect a common elevation of said second pole second tops.